

1 Terry Goddard  
2 Attorney General  
3 Firm No. 14000  
4 Dean E. Brekke (016394)  
5 Assistant Attorney General  
6 1275 W. Washington  
7 Phoenix, Arizona 85007  
8 Tel: (602) 542-7031  
9 Fax: 602) 364-3202  
10 Attorney for the State

11  
12 **BEFORE THE ARIZONA MEDICAL BOARD**

13 In the Matter of:

14 **BERND JACOB, M.D.,**

15 Holder of License No. 10119  
16 For the Practice of Allopathic  
17 Medicine In the State of Arizona,

18 Respondent.

MD-01-0052  
MD-02-0083

**CONSENT AGREEMENT FOR  
LETTER OF REPRIMAND**

**CONSENT AGREEMENT**

RECITALS

19 In the interest of a prompt and judicious settlement of the above-captioned matters  
20 before the Arizona Medical Board (the "Board") and consistent with the public interest,  
21 statutory requirements and responsibilities of the Board and under A.R.S. § 41-  
22 1092.07(F)(5) and A.R.S. § 32-1451(F), Bernd Jacob, M.D. ("Respondent"), holder of  
23 License No. 10119 for the practice of allopathic medicine in the State of Arizona, and the  
24 Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order  
25 ("Consent Agreement") as the final disposition of this matter.  
26

1           1.     Respondent has read and understands this Consent Agreement as set forth  
2 herein, and has had the opportunity to discuss this Consent Agreement with an attorney.  
3 Respondent voluntarily enters into this Consent Agreement for the purpose of avoiding  
4 the expense and uncertainty of an administrative hearing.

5           2.     Respondent understands that he has a right to a public administrative hearing  
6 concerning each and every allegation set forth in the above-captioned matters, at which  
7 administrative hearing he could present evidence and cross-examine witnesses. By  
8 entering into this Consent Agreement, Respondent freely and voluntarily relinquishes all  
9 right to such an administrative hearing, as well as all rights of rehearing, review,  
10 reconsideration, appeal, judicial review or any other administrative and/or judicial action,  
11 concerning the matters set forth herein. Respondent affirmatively agrees that this  
12 Consent Agreement shall be irrevocable.

13           3.     Respondent agrees that the Board may adopt this Consent Agreement or any  
14 part of this agreement under A.R.S. § 32-1451(F). Respondent understands that this  
15 Consent Agreement or any part of the agreement may be considered in any future  
16 disciplinary action against him.

17           4.     Respondent understands that this Consent Agreement does not constitute a  
18 dismissal or resolution of other matters currently pending before the Board, if any, that  
19 are not specifically address herein. Respondent further understands that this Consent  
20 Agreement does not constitute any waiver, express or implied, of the Board's statutory  
21 authority or jurisdiction regarding any other pending or future investigation, action or  
22 proceeding. Respondent also understands that acceptance of this Consent Agreement  
23 does not preclude any other agency, subdivision or officer of this state from instituting  
24 other civil or criminal proceedings with respect to the conduct that is the subject of this  
25 Consent Agreement.

26

1           5.     All admissions made by Respondent in this Consent Agreement are made  
2 solely for the final disposition of this matter, and any related administrative proceedings  
3 or civil litigation involving the board and Respondent. This Consent Agreement is not to  
4 be used for any other regulatory agency proceedings, or civil or criminal proceedings,  
5 whether in the State of Arizona or any other state or federal court, except related to the  
6 enforcement of the Consent Agreement itself.

7           6.     Respondent acknowledges and agrees that, upon signing this Consent  
8 Agreement and returning this document to the Board's Executive Director, Respondent  
9 may not revoke his acceptance of the Consent Agreement or make any modifications to  
10 the document, regardless of whether the Consent Agreement has been issued by the  
11 Executive Director. Any modification to this original document is ineffective and void  
12 unless mutually approved by the parties in writing.

13           7.     Respondent understands that the foregoing Consent Agreement shall not  
14 become effective unless and until adopted by the Board and signed by its Executive  
15 Director.

16           8.     Respondent understands and agrees that if the Board does not adopt this  
17 Consent Agreement, he will not assert as a defense that the Board's consideration of this  
18 Consent Agreement constitutes bias, prejudice, prejudgment or other similar defense.

19           9.     Respondent understands that this Consent Agreement is a public record that  
20 may be publicly disseminated as a formal action of the Board, and shall be reported as  
21 required by law to the National Practitioner Data Bank and the Healthcare Integrity and  
22 Protection Data Bank.

23           10.    Respondent understands that any violation of this Consent Agreement  
24 constitutes unprofessional conduct pursuant to A.R. S. §32-1401 (25)(r) ([v]iolating a  
25 formal order, probation, consent agreement or stipulation issued or entered into by the  
26

1 board or its executive director under the provisions of this chapter) and may result in  
2 disciplinary action pursuant to A.R.S. § 32-1451.

3  
4  
5 ACCEPTED BY

6 DATED: 11/17/05

7  
8 Bernd Jacob, M.D.

9  
10 Will L. Sammons, Esq.  
11 Attorney for Respondent

12 **FACTUAL ALLEGATIONS**  
13 **MD-01-0052**

- 14 1. On January 18, 2001, the Board opened an investigation after it had received notice  
15 from Respondent's medical malpractice insurance carrier of a settlement of a  
16 lawsuit filed by FL, RL and JL against Respondent arising from treatment  
17 surrounding PL's high-risk pregnancy. The Plaintiffs had alleged that  
18 Respondent's treatment fell below the standard of care and constituted negligence.
- 19 2. On December 15, 1995, Respondent began treating Patient FL, a 22 year old  
20 morbidly obese female for her pregnancy. Respondent estimated her delivery date  
21 at July 25, 1996.
- 22 3. FL's pregnancy was notable for episodes of hypertension and she was advised to  
23 rest and restrict salt intake. On March 15, 1996, spontaneous premature rupture of  
24 membranes was demonstrated at 21 weeks gestation and the patient was observed  
25 for signs of infection from then on.  
26

- 1 4. On July 12, 1996, FL was given an ultrasound study ordered by Respondent. The  
2 ultrasound indicated no unusual findings, but did indicate a gestation age of 35  
3 weeks in contrast to the estimated 38 weeks estimated on the basis of FL's last  
4 menstrual period as well as a previous ultrasound study. This would tend to  
5 indicate that the fetus was facing a growth restriction. However, due to the large  
6 confidence limits (between 5 wks and one day and 7 wks and one day or in the  
7 most extreme case from 32+4d to 39+5d) prediction of EGA and normal amount of  
8 amniotic fluid the ultrasound was interpreted as being within confidence limits and  
9 reassuring. The patient was followed with Non Stress Tests. A normal AFI test,  
10 measuring amniotic fluid, gave contradictory information.
- 11 5. Respondent examined FL on July 15, 1996 and noted that the fetus position was  
12 breech, but otherwise the exam was normal. FL was weighed at 348 pounds with a  
13 blood pressure of 140/80.
- 14 6. Respondent examined FL again on July 22, 1996, and conducted a non-stress test,  
15 and noted positive fetal movement and contractions and the cervix was closed and  
16 the patient was swollen. An ultrasound study showed no structural abnormalities,  
17 but indicated the gestational age was slightly smaller than estimated ten days  
18 earlier and there was no apparent fetal growth. Once again, because of the large  
19 confidence limit, the normal amount of amniotic fluid and the reassuring non-stress  
20 tests in the interim as well as no asymmetry in the growth of the fetus the  
21 respondent continued to follow with Non Stress Tests now twice weekly.  
22 Induction was scheduled on July 26, 1996 for July 31, 1996 – the first available per  
23 hospital scheduler.
- 24 7. On July 29, 1996, Respondent examined FL again. FL indicated that there had  
25 been reduced fetal movement since July 27. Respondent administered a non-stress  
26

1 test that was non-reassuring, meaning there was adequate fetal movement but no  
2 increase in fetal heart rate with the movement.

3 8. Respondent ordered a confirmatory test, a contraction stress test (CST), and sent  
4 FL to the hospital. Since each contraction test is preceded by at least 20 minutes  
5 of a confirmatory Non Stress Test and since the patient was very large and  
6 therefore difficult to get a complete and satisfactory Non Stress Test on and since  
7 frequent non-reactive Non Stress Tests (no fetal movement) change to reactive  
8 Non Stress Tests at the Hospital. Respondent did not go to the hospital himself  
9 until summoned three hours later by a senior resident. Standard of care indicated  
10 that Respondent needed to be present to expedite performance of the required  
11 surgery.

12 9. The baby was delivered with multiple problems at birth apparently caused from  
13 restricted oxygen supply although the delays on the date of delivery probably did  
14 not result in the problems.

15 **MD-02-0083**

16 10. On February 12, 2002, the Board received statutory notice of a monetary  
17 settlement on behalf of Respondent arising from a medical malpractice lawsuit.  
18 The Board opened an investigation.

19 11. Patient CT, a 32-year-old female, first saw Respondent on May 5, 1998, for  
20 medical care during her pregnancy. At the time of her uneventful normal  
21 spontaneous vaginal delivery on December 15, 1998, Patient CT elected to have  
22 voluntary sterilization via laparoscopic tubal ligation (LTL). Because St. Joseph's  
23 Hospital did not permit sterilization procedures at their hospital, Patient CT was  
24 discharged on December 17, 1998.

25 12. Patient CT received additional counseling at Respondent's office on her post  
26

1 partum visit and was shown a videotape and given pamphlets explaining the risks  
2 and benefits of the LTL procedure, including the complications, permanency and  
3 failure rate. She elected to have the procedure performed by Respondent at  
4 Arrowhead Community Hospital.

5 13. Patient CT was admitted to the Ambulatory Surgical Unit of Arrowhead  
6 Community Hospital at 1:00 p.m. on February 12, 1999, for an elective  
7 sterilization via LTL, with all the necessary consent forms signed, dated and  
8 witnessed.

9 14. Prior to anesthetizing Patient CT, Respondent discovered that the two reusable  
10 trocars with insufflation ports, which Respondent had requested for the procedure,  
11 were not available and could not be rapidly obtained. The insufflation ports are  
12 necessary to maintain inflation in the peritoneum during the procedure.

13 15. Disposable ports with insufflation side-arms were available, but Respondent did  
14 not like using them. Respondent was trained on the reusable trocars and felt that  
15 the disposable kind were too short and too sharp and he worried about bowel  
16 injury.

17 16. Patient CT was anesthetized and Respondent used a Veress needle through a stab  
18 incision to infuse CO2. He then removed the needle and the laparoscope and the  
19 manipulating arm were introduced via trocars, without the insufflation port, under  
20 direct visualization. Almost from the beginning, Respondent noticed more than  
21 average bleeding.

22 17. The right fallopian tube was cauterized after complete visualization, but  
23 Respondent noticed that bleeding appeared to well up and Respondent could not  
24 identify the source. His operative note does not mention why he was not able to  
25 insufflate the abdomen again.  
26

- 1 18. Respondent then converted the procedure to a “mini-laparotomy,” an open  
2 procedure. The left tube was identified and tied and blood was evacuated from the  
3 pelvis. Respondent could not find a significant injury except for a small bruise in  
4 the right sacral area with a small hematoma formed over the bruise. The surgery  
5 was then completed in the usual fashion.
- 6 19. Patient CT was hospitalized for four days rather than the outpatient basis she was  
7 admitted under.
- 8 20. The standard of care requires the ability to maintain pneumoperitoneum during a  
9 laparoscopic procedure. Although Respondent failed to insure that he could  
10 maintain the pneumoperitoneum, unexpected bleeding is a known complication  
11 and his conversion to an open laparotomy was an appropriate response to the  
12 situation. There is no indication that Respondent failed to meet the appropriate  
13 standard of care and this investigation should be dismissed.

#### 14 MITIGATION

- 15 21. Effective August 31, 2005, Respondent no longer practices medicine in the State of  
16 Arizona. Shortly after the event set out relating to MD-04-0296, Respondent took a  
17 leave of absence because of illness. Although the record indicates that he resigned  
18 his privileges at Maryvale while under investigation, Respondent indicates that he  
19 resigned because of personal health issues, workload concerns, and he intended to  
20 stop practicing obstetrics and instead focus only on gynecology exclusively at  
21 Arrowhead Hospital.

#### 22 ALLEGATIONS OF UNPROFESSIONAL CONDUCT

- 23 22. The Board possesses jurisdiction over the subject matter hereof and over Bernd  
24 Jacob, M.C. (“Respondent”), holder of License No. 10119, for the practice of  
25 allopathic medicine in the State of Arizona.
- 26



1 31. The conduct and circumstances described above in paragraphs 1 through 9  
2 constitute unprofessional conduct pursuant to A.R.S. § 32-1401(24)(q) "Any  
3 conduct or practice which is or might be harmful or dangerous to the health of the  
4 patient or the public."

5 **CONSENT ORDER**

6 IT IS THEREFORE ORDERED that:

- 7 1. Respondent Bernd Jacob, M.D., holder of License No.10119, is hereby issued a  
8 Letter of Reprimand for failing to appropriately manage a high risk pregnancy  
9 by failing to hospitalize the patient for a perinatologist consultation upon  
10 obtaining conflicting test results that may have indicated intrauterine growth  
11 restriction more than two weeks prior to delivery in MD-01-0052.  
12 2. Acceptance of this Consent Agreement by the Arizona Medical Board will  
13 conclude all proceedings related to the investigations enumerated in the  
14 caption.

15 DATED AND EFFECTIVE this 9<sup>th</sup> day of February, 2008.

16  
17 (SEAL)



ARIZONA MEDICAL BOARD

18 Timothy C. Miller  
19 Timothy C. Miller, J.D.  
20 Executive Director

21 Original of the 9<sup>th</sup> day of February, 2008,  
22 with:

23 Arizona Medical Board  
24 9545 E. Doubletree Ranch Road  
25 Scottsdale, Arizona 85258

26 ///

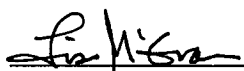
1 COPY of the foregoing mailed by U.S.  
2 Certified Mail this 9<sup>th</sup> day of February, 200<sup>6</sup><sub>8</sub>, to:  
3 Regular

4 Bernd Jacob, M.D.  
5 4550 North 51st Avenue, Suite 71  
6 Phoenix AZ 85031-1708  
7 Respondent

8 COPIES of the foregoing mailed  
9 this 9<sup>th</sup> day of February, 200<sup>6</sup><sub>8</sub>,  
10 to:

11 Winn Sammons, Esq.  
12 Sanders & Parks, PC  
13 3030 N, Third Street, Suite 1300  
14 Phoenix, AZ 85012

15 Dean B. Brekke  
16 Assistant Attorney General  
17 1275 W. Washington, CW/LES  
18 Phoenix, Arizona 85007

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20 Board Operations

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